

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: IOWA TELECOMMUNICATIONS SERVICES, INC., d/b/a IOWA TELECOM	DOCKET NO. RPU-02-4
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ORDER GRANTING MOTION TO COMPEL

(Issued August 30, 2002)

On August 22, 2002, Iowa Telecommunications Services, Inc. (Iowa Telecom), filed with the Utilities Board (Board) a motion for an order compelling Coon Rapids Municipal Communications Utilities, Grundy Center Municipal Communications Utility, Harlan Municipal Utilities, Reinbeck Municipal Telecommunications Utility, Manning Municipal Communication and Television System Utility, and The Community Cable Television Agency of O'Brien County, d/b/a The Community Agency and TCA¹ (the "Municipal Utility Intervenor"), to produce certain information.

Iowa Telecom recites that it submitted data requests to the Municipal Utility Intervenor and that certain responses indicated that the information sought was confidential. Iowa Telecom then sent a letter requesting production of the

¹ The cities of Hartley, Paullina, and Primghar, only.

confidential information and submitting a protective agreement. By responsive letter, the Municipal Utility Intervenors refused to produce the information, arguing the protective agreement was inadequate. Iowa Telecom offered a revised protective agreement, but states in its motion to compel that counsel for the Municipal Utility Intervenors has stated that the materials will not be produced in the absence of a Board order.

On August 23, 2002, the Board issued an order noting that the hearing in this matter is scheduled for September 4, 2002, and shortening the time for responding to the motion to compel. Pursuant to that order, on August 26, 2002, the Municipal Utility Intervenors filed a resistance to the motion to compel. They argue that Iowa Telecom is seeking information that is confidential, is not relevant, and will not lead to admissible evidence. They argue that the issues before the Board relate to Iowa Telecom's rates and costs, not the costs of the Municipal Utility Intervenors, and that the requested information is therefore irrelevant. They also argue that the information is confidential pursuant to Iowa Code § 388.9(2), which provides that specified city utility records are not subject to public disclosure if (1) the competitive position of the city utility would be harmed by public disclosure and (2) no public purpose would be served by disclosure.

On August 29, 2002, Iowa Telecom filed a response to the resistance, arguing that the requested information is relevant because it (1) relates to Iowa Telecom's claim that it has lost access lines due to competition; (2) relates to the Municipal Utility Intervenors' testimony that there are special limits and restrictions on the

operation of municipal utilities; and (3) relates to the issue of potential cross subsidies from municipal electric utilities to municipal telecommunications utilities, a subject about which each municipal intervenor testifies. Iowa Telecom also argues that while § 388.9(2) allows municipal utilities to keep certain records from public disclosure, and therefore confidential, it does not make those records "privileged" in the sense of being unavailable for discovery pursuant to an appropriate protective agreement.

The Board will grant the motion to compel, subject to the terms of the protective agreement proposed by Iowa Telecom. The Municipal Utility Intervenors chose to intervene in this proceeding and testify about such matters as Iowa Telecom's access line losses, special restrictions and limitations on municipal utilities, and prohibitions on cross subsidies. The intervenors cannot now refuse to allow Iowa Telecom an opportunity to examine the information supporting the intervenors' own testimony. The information may be confidential, pursuant to § 388.9(2), but it is not privileged from discovery.

The hearing in this matter will begin at 9 a.m. on Wednesday, September 4, 2002. Accordingly, the Board will require that the intervenors produce the requested information by 12 noon on Tuesday, September 3, 2002.

IT IS THEREFORE ORDERED:

The "Motion To Compel" filed on August 22, 2002, by Iowa Telecommunications Services, Inc., is granted. The Municipal Utilities Group shall provide responses to Iowa Telecom's data requests by 12 noon on Tuesday, September 3, 2002.

UTILITIES BOARD

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Sharon Mayer
Executive Secretary, Assistant to

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 30th day of August, 2002.